



THE COURT *Legacy*

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The House of Correction That Detroit Built

By Paul W. Keve

Fall in the year 1861 was hardly a sensible time to open an important new institution, especially a prison. Such institutions had to compete with the military for the competent workers both needed. The first Superintendent, Zebulon Brockway, even complained that the low quality of the prisoners handicapped him in making the institution self supporting. However, the Detroit House of Correction was ready to accept its first prisoners at the beginning of August that year, as the Civil War raged just four months after the surrender of Fort Sumter.

Within a relatively short time it was noted for being well managed and superior among prisons of its time. An unusual feature of this city-operated House of Correction was its practice of taking prisoners from many jurisdictions, not just from the city, or Wayne County. This included misdemeanants from other Michigan counties, or felons from state courts. In time it also served importantly for federal prisoners.

The Judiciary Act of 1789 established the federal court system, defined federal crimes and their penalties, but did not create any federal prisons. It was left to the U.S. Marshal's service to find state or local facilities where committed federal prisoners could serve their time at U.S. expense.

At first this was not a serious problem as for several decades the number of federal prisoners was small. An inquiry to all U.S. marshals in 1846, asking them to report on the number of federal prisoners they then had in custody, was answered by sixteen marshals. Four reported no prisoners at all, while the others had varying numbers from one to twelve.¹

In Michigan, the minimal records surviving from the 1850s show that most criminal cases before the two federal district courts were disposed of with fines or short jail sentences, often with both. For the occasional defendant given a prison sentence, commitment to the state prison at Jackson was virtually routine. But in the late 1850s, with the state prison getting crowded (its women's unit was especially inadequate), city officials in Detroit planned their new institution with the expectation that it should serve many other jurisdictions, including federal courts. This was a factor in recruiting the first superintendent.

In selecting Zebulon Brockway to organize and administer the House of Correction, city officials were departing significantly from the partisan politics so long a force in Detroit city government.² A young man of thirty, Brockway was without political identity, from another state, and attractive only because he had built a reputation as a prison administrator of professional competence. He and the board of inspectors of the new Detroit House of Correction agreed with the view generally held that prisons, utilizing the labor of their inmates, should strive to be self-supporting. As he saw it, this would be accomplished more easily if federal prisoners were included, as they were thought to include more competent individuals with longer sentences.

On his arrival, however, Brockway was disappointed to find that the Michigan legislature, in an 1861 act which authorized and defined the House of Correction, had failed to mention federal courts in its listing of the jurisdictions that could commit prisoners. He sadly commented, that "able-bodied men of the class from which prisoners usually come had quite generally enlisted as volunteers in the army, so that it was with a small number of miserable women and broken-down men transferred from the county jail that the house of correction was opened."³

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THE COURT LEGACY

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In 1867 the Michigan legislature authorized acceptance of federal prisoners, but only from “any court of the United States, in or sitting within the State of Michigan.”⁴ Brockway seems to have thought that this restriction was more accidental than deliberate. In a restrained expression of his hope to serve any federal court, he commented in an annual report that “there has always been a desire on the part of our United States Court to send to this institution a certain class of criminals convicted before it, but through inadvertency in the preparation of the act, no authority having been conferred to receive and detain them, it has been impracticable.”⁵ This “inadvertency” was corrected in 1871 when a legislative act authorized the acceptance of federal prisoners from anywhere.

Meanwhile, federal courts had not always waited for the 1867 and 1871 changes. Very cautiously and infrequently, Judge Ross Wilkins of the Eastern District of Michigan experimented with use of the new prison. Judge Wilkins was a well-respected jurist who had been appointed by President Andrew Jackson at the time that Michigan became a state in 1837.⁶

Judge Wilkins' first such commitment occurred in October 1862, when defendant William Cook, convicted of counterfeiting, was sentenced to pay a fine of \$100 and serve one day in the Detroit House of Correction. It is probable that the superintendent made very little effort during that one day to comply with the routine phrase in the court order, “at hard labor.” Having done it once, Judge Wilkins made a slightly bolder move in February of 1863 with the commitment of a female defendant to serve three months. During his remaining years before retirement in early 1870, Judge Wilkins continued to send offenders primarily to the State prison, while using the House of Correction at a rate of only about one case each year, and typically for one day.⁷

The federal cases held a special interest for Brockway whose autobiography profiled several of them. One such case, although significant to Civil War history, is reflected surprisingly little in the House of Correction history. In February 1865, the institution admitted Bennet G. Burley, whom Brockway described as “a young Scotchman of excellent family and education whose sympathies were with the southerners in our civil war...”⁸

Though held as a federal prisoner, Burley was not a convicted offender, but a pre-trial detainee. As a writer and reporter with an enthusiasm for adventure, Burley had teamed with a Confederate officer to spy on Union activities in the Detroit area, and also to capture a Union gunboat, the U.S.S. Michigan, patrolling Lake Erie. With it they would attack a Union prison in the harbor at Sandusky, Ohio and demand the release of all its Confederate prisoners.

The conspirators started with the armed takeover of a small lake steamer, the *Philo Parsons*, quickly met with unexpected obstacles and abandoned its capture. Burley was caught in Ontario and delivered to United States authorities, while his co-conspirator was eventually caught in Ohio and executed. By then Burley was known for his record of daring exploits and successful escapes, so he had to be treated as a high profile security risk.

Brockway, acutely uneasy about having this elusive prisoner with his potential for bringing serious embarrassment, personally made sure that Burley was securely “ironed.” As he later wrote, “I wakened in the small hours of every night to inspect personally the corridor where he was confined and to note the vigilance of the patrolling guard.”⁹ At one point Brockway had to arrange for regular Army soldiers to patrol the area after receiving a tip that an attack on the prison to free Burley was being planned.

When he was scheduled for trial in federal court in Sandusky, Burley was transferred to the Ottawa county jail, a move which he exploited handily by walking to freedom when the sheriff was not looking. Eluding capture, he eventually made his way back to Scotland, resumed the Scotch spelling of his name, Burleigh, and went on with his interrupted career as an author and well known war correspondent.¹⁰

In his eleven years as superintendent of the Detroit House of Correction, it was Brockway’s later claim that he had accepted 99 federal prisoners. It may have seemed like a sizable population in this category, but actually it was not. If that many commitments had been distributed evenly over the eleven years it would have been at an average rate of only one about every five weeks. With the short sentences then typical, there would have been very few federal prisoners at any one time. It was after Brockway left that the

federal commitments began to increase, although this was partly a delayed effect of Brockway’s work. The 1871 change in Michigan law, tardily allowing acceptance of federal commitments, was a key factor, of course, but judges of distant federal courts still would not have sent prisoners there had not the institution built a reputation for its unusually progressive administration.

One feature contributing substantially to that good reputation was the success in reaching a goal that was widely sought, but rarely accomplished in the corrections field – a self-supporting institution. In almost every year Brockway reported that the cost of operating the facility was more than off-set by fees charged for boarded prisoners, and by the sale of products manufactured in its shops, mainly chairs.

Another reason for the favorable reputation, and one that was more positively related to constructive treatment of inmates, was the unusual quality of service provided for female prisoners. Because it accepted most of the women who would otherwise have been placed at the state prison in Jackson, and because the Civil War reduced the number of men being committed, while causing female commitments to rise, the Detroit institution began its career with a remarkably high percentage of women. Brockway responded to the needs of this group by establishing a separate unit called the House of Shelter. With its home-like living arrangements and active educational programs, it was ahead of its time in helping young women get restarted in the community upon release.

An occasional report was available from a new source, the United States Department of Justice. In 1873, the Department established a service to monitor the prison placements of federal offenders, employing an “agent” to make occasional inspections of institutions holding federal prisoners. In each of the years 1879, 1880 and 1881, the first agent, George K. Chase, made tours of eight of the most regularly used state prisons, recording the count of federal prisoners being boarded at each and inquiring, though somewhat superficially, about their treatment. The House of Correction had a count of 105 federal cases when Chase visited in 1879, but the count was rising and it reached a peak of 279 in 1880.¹¹

100 years ago and before...

- The provision for holding the first United States Court in this region was made by federal act on February 13, 1801. Michigan was part of the District of Ohio, which convened in Cincinnati on the 10th of June and December.
- The first United States District Court for the State of Michigan was established by federal act on July 1, 1836. The sessions were scheduled for the first Mondays of May and October in Detroit. Two hundred jurors were selected by the clerk and marshal from the different counties in the district. They were paid \$2.00 per day.
- The first District Court Judge was Ross Wilkins who served from 1837-1870 at a salary of \$3,500 per year.

50 years ago...

- Charles C. Simons was the only judge from Michigan on the Sixth Circuit. The Eastern District Judges were Arthur A. Kosciński, Theodore Levin, Arthur F. Lederle, and Frank A. Picard. The U.S. Attorney was Edward M. Kane.
- Stephen J. Roth (District Court Judge, 1962-1974) became attorney general for the State of Michigan.
- University of Michigan Law School had an enrollment of 1,030, taxing the facilities, consisting of 33 women (record) and five foreign students.
- The January Michigan State Bar Journal included an article on the new governor, G. Mennen Williams, highlighting his career written by Horace W. Gilmore (District Court Judge, 1980-1998).
- The Inter-American Bar Association held its sixth conference (the first in the United States) in Detroit. Every country from North and South America, except El Salvador and Nicaragua were represented.
- The Club Bob-Lo at the foot of Woodward was the after work meeting place for the downtown lawyers, and home of the lawyers bowling league.
- In March, Walter I. McKenzie and Archie Katcher, referees in bankruptcy for the Eastern District, provided a team discussion on the history of the Bankruptcy Act and the many procedural problems at the Bay City County Bar Associations legal institute. At the same institute, District Court Judge Frank A. Picard presented his famous monologue, "the trial of Christ."

In writing about this era, a later attorney general noted that "three fifths of the federal prisoners were confined in New York and Ohio penitentiaries and the Detroit House of Correction."¹² However, the earlier attorneys general found that the gathering of statistical data was regrettably uncertain with the minimal staff then available. One of them complained that "such examinations of this nature as have been heretofore conducted have been made as opportunity permitted, with but slight attempt at regularity, and by officers or employees temporarily assigned to that work as incidental to the discharge of other duties at the same time."¹³

Though population counts at the House of Correction cannot be taken as precise, there is no doubt that the number of federal prisoners showed a rise in the 1880s. The major contributor was a U.S. District Court sitting in a former Army barracks building in Fort Smith, Arkansas. Located on the border between Arkansas and the Indian Territory, now Oklahoma, the court in Fort Smith had been given jurisdiction over crimes committed in the Territory by whites. The tribal courts could deal only with cases involving Indians. The Territory was plagued by the predatory activities of outsiders who sought to profit by the virtual absence of any effective law enforcement there. That situation began to change with the appointment in 1875 of a new judge, former Congressman, Isaac Parker, who came to the bench with a determination to deal forcefully with the Territory's crime problem.

To make his intentions clear to all, Judge Parker had a large gallows installed in front of his adapted court building, and in its first use six men were executed simultaneously. Though he soon became known as a "hanging judge," Parker was in some respects ahead of his time in his humane concern for defendants. With no state prison close at hand, he had to use institutions at a distance, but he did not do so blindly. He informed himself perceptively on the facilities available, including the one 900 miles away in Detroit. In the mid 1880s, when importuned by the owners of a privately operated prison in Little Rock to send prisoners there, Parker explained to the Attorney General his opinion that the Little Rock prison was "run on the purely speculative

principle of getting the most dollars and cents out of the transaction.” By contrast, he had found the House of Correction in Detroit to be operated with a humane concern for the men and women he was sending there. He would continue to use it despite the extra cost because of “the mandate of duty we must observe toward even the meanest of God’s creatures. The whole system of punishment is based on the idea of reform, or it is worse than nothing.”¹⁴ The flow of prisoners from Fort Smith to Detroit continued during much of the 1880s, but with conditions gradually becoming more settled in Arkansas and Oklahoma the need for the Detroit institution came to a quiet end.

After Brockway left in 1872, the quality operation which he started had a momentum that sustained it for some time, but only barely. The several wardens who served successively during the remainder of the century administered in a safe, responsible mode, but without the inspired level of leadership that would keep the institution distinctive.

Though it continued to operate off Gratiot Avenue, just east of downtown Detroit, until moved to Plymouth in 1931, by the late 1890s the institution had become just another run-of-the-mill prison, and no longer in demand for federal placements. The Michigan legislature, in 1886, amended the law to prohibit acceptance of federal prisoners from outside the State. And inevitably Congress came reluctantly to the conclusion that the federal government would have to have its own institutions. In 1891 a Congressional act authorized three federal prisons, and four years later a temporary facility at Fort Leavenworth began receiving federal prisoners who would shortly begin the work of constructing the massive penitentiary still operating at Leavenworth, Kansas.

The federal government’s dependence upon Detroit’s prison concluded with good feelings, as Department of Justice agents expressed satisfaction in October 1885, reporting “We went through the Penitentiary and from what we saw and heard, feel assured that prisoners of the United States who are confined here receive good food and kind and humane treatment.”¹⁵

NOTES:

1. *Frederick S. Calhoun, The Lawmen: United States Marshals and Their Deputies, 1789-1989*, (Washington, Smithsonian Institution Press, 1989), 57-58.
2. *Silas Farmer, The History of Detroit and Michigan*, (Detroit, Sila Farmer & Co., 1884), 108
3. *Zebulon R. Brockway, Fifty Years of Prison Service*, Montclair, N. J., Patterson Smith (reprint), 1969, 75.
4. *1867 Michigan Public Acts, 131, Sec. 4.*
5. *Fifth Annual Report of the Officers of the Detroit House of Correction to the Common Council of the City of Detroit for the Year 1866.*
6. *Philip Mason, “Ross Wilkins, Michigan’s First U. S. District Judge,” The Court Legacy*, April 1993.
7. *Criminal Docket Book, U.S. District Court, EDM, 1851-1863*, National Archives and Records Administration, Chicago.
8. *Brockway, op cit.*, 97.
9. *Ibid*, 98.
10. *Charles E. Frohman, Rebels on Lake Erie*, (Columbus, Ohio, Ohio Historical Society, 1965), 72-81, 114-21.
11. *General records of the Department of Justice, records of officials and organizational units; administrative division, General Agent, 1877-1923, entry 186, RG 60, NARA.*
12. *Homer Cummings, Federal Justice*, (New York, The MacMillan Company, 1937), 355.
13. *Annual Report of the Attorney General, 1897, xix.*
14. *For more on Isaac Parker see, Glenn Shirley, Law West of Fort Smith*, (Lincoln, University of Nebraska Press, 1968), and, *S. W. Harmon, Hell on the Border: He Hanged Eighty Eight Men*, (Fort Smith, The Phoenix Publishing Co., 1898)
15. *General records of the Department of Justice; records of officials and organizational units; administrative division; letters to the Attorney General, March 5, 1882 to September 27, 1893, Vol. 4, entry 170, RG 60, NARA. Report from agent Frank Strong, November 12, 1885. ■*

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Arthur J. Tuttle: “Dean of the Federal Bench”

By Aaron J. Veselenak

“The Judiciary has fallen into a very low state in this country,” President William Howard Taft said, “and I’ll be damned if I put any man on the bench of whose character and ability there is the least doubt.”

To Taft, who had served as a judge on the United States Court of Appeals for the Sixth Circuit (1892-1900), and who would become the only U.S. president ever to sit on the U.S. Supreme Court (Chief Justice, 1921-30), judicial appointments were paramount over any other duty as chief executive.

So when Alexis Caswell Angell resigned his judgeship in 1912 after serving a brief eleven months on the Eastern District court, Taft was painfully slow in filling the vacancy. The early favorite was Michigan Supreme Court Justice Flavius L. Brooke who had the backing of Michigan’s Republican U.S. Senator William Alden Smith. Michigan’s other Republican U.S. Senator Charles S. Townsend, however, supported U.S. District Attorney Arthur J. Tuttle, who had served as campaign manager for Townsend.

Every week throughout the summer a delegation from Michigan, supporting Tuttle, met with the President. President Taft nominated Arthur J. Tuttle as Angell’s successor, and the new judge was sworn in on August 12, 1912.

Courthouse Gathering – John Feikens Center

A special federal court session witnessed by almost 200 lawyers, judges and friends, saw Chief Judge **Anna Diggs Taylor** “pass the gavel” to new Chief Judge **Lawrence Zatkoff**. Then a reception was held in the courts recently refurbished conference quarters. ■

The Early Years

Arthur J. Tuttle was born on a farm in Leslie, Michigan, on November 8, 1868, to Ogden Valorius and Julia Elizabeth (McArthur) Tuttle. He had one sister, Grace. His father's ancestors had come to America from England in 1635. His grandfather, John J. Tuttle, settled in southern Michigan in 1837, establishing a farm. John Tuttle became a prominent citizen of Ingham County, serving as County Coroner, Justice of the Peace, School Director and Leslie Township Supervisor.

Young Arthur graduated from high school in 1888, entered the University of Michigan and graduated with a Ph.B in 1892. He then enrolled in the university's law school and obtained a

Bachelor of Laws Degree in 1895. Tuttle joined forty-four fraternal, civic, benevolent, law and scholastic organizations throughout his collegiate and professional life. Among them were: Phi Beta Kappa, Phi Alpha Delta, American and Detroit Bar Associations, Council of American Law Institute, Michigan State Horticultural Society, Detroit Boat Club, Detroit Athletic Club, Detroit Golf Club, Detroit Automotive Club and Rotary Club. For many years he served as bank president for the People's Bank of Leslie and director of the Home Telephone Company.

Tuttle's public life began after his election as Prosecuting Attorney of Ingham County in 1898. Here he gained notoriety for his dogged grand jury

investigation of graft in connection with a military board that equipped troops during the Spanish-American War. Tuttle even had a subpoena served on governor Hazen S. Pingree while he was rushing for a train out of Lansing. Two brigadier generals were convicted, but received unconditional pardons from an angry Governor.

On March 11, 1903, Tuttle married Jessie Beatrice Stewart of Grand Pointe, Harsen's Island. The newlyweds honeymooned in Europe, traveling extensively through Spain, Italy, Germany, France and England. Jessie gave birth to a daughter, Ruth, in March of 1904. A second daughter, Esther, soon followed in September, 1905.



In 1907, he joined the Lansing law firm of McArthur & Dunnebacke, becoming a senior partner. That same year he took a seat in the Michigan State Senate after being elected from the 14th district. He served in Michigan's Senate until 1910, helping to achieve modest reforms in education. In 1911 Taft appointed him U.S. District Attorney for the Eastern District of Michigan. In 1912 he became district judge.

Tragedy Strikes

As congratulatory letters were arriving, tragedy struck. Jessie died unexpectedly on August 24th only twelve days after he was sworn in. She was thirty-four. A couple of weeks earlier doctors had discovered pulmonary hemorrhaging which was believed to have come from a severe cold Mrs. Tuttle had caught in June. Her untimely death provoked a

tremendous outpouring of sympathy. Judge Tuttle sought refuge from his grief in his two daughters, creating a bond that lasted a lifetime. In fact, he never remarried. Some of his happiest moments came when his daughters, Ruth and Esther, were admitted to the bar in 1930 after graduating from law school at the University of Michigan, and when they wed in a double ceremony in 1936.

The Judge toiled diligently with the backlog of cases left by Judge Angell, winning the respect of many for his hard work and dedication. It would be some ten years before the U.S. Congress would create another judgeship in the eastern district to alleviate an ever-burgeoning workload. During that time Tuttle gained a reputation as a stern judge, especially in the sentencing of "white slavers" who through the prostitution trade had violated the federal Mann Act.

During World War I, Judge Tuttle presided over several sensational sabotage trials. Prohibition unleashed a new wave of crime that could not be countenanced and in 1924 Tuttle sentenced Hamtramck Mayor Peter C. Jezewski, together with the city's former police commissioner and a former police lieutenant, to two years in Leavenworth for their role in a "beer ring". He was lenient on the saloonkeepers, however, saying, "conspiracy with the brain is more culpable than conspiracy with the hands."

When the overworked judge had time off, he would retreat to his family's 160-acre apple farm in Leslie which he had operated since 1911. He was an avid hunter. Deer season often took him to northern Michigan, and his private judicial chambers was filled with trophy mounts.

U.S. Senatorial Bid

In 1924, Tuttle and most Republicans in the state became disillusioned with Michigan's maverick Republican U.S. Senator James Couzens, because of his failure to follow the GOP party line. Couzens had aligned himself with progressives and other "radical Republicans" in the Senate – notably Robert "Battlin' Bob" LaFollette of Wisconsin. Tuttle and three others – Republicans Hal H. Smith, Daniel W. Tussing, and Democrat Mortimer E. Cooley – announced their intentions to challenge Couzens in the September 9th statewide open primary. Tuttle was considered the strongest

challenger, but it appeared that he would split the vote against Couzens with Smith. Less than a week before the election, Smith dropped out of the race and endorsed Tuttle. It appeared that the judge stood a chance of upsetting Couzens as Tussing, and Cooley were expected to garner little support.

Tuttle had the backing of farmers and temperance groups while Couzens enjoyed the support of labor. The *Detroit Free Press* endorsed Tuttle. Two days before the primary an editorial appealed:

“A vote for Judge Arthur J. Tuttle in the senatorial primary Tuesday will be a vote for President Coolidge and for sound Americanism as opposed to the schemes of the demagogic bloc in Congress. Failure of the Republicans of Michigan to nominate Judge Tuttle will please every Red and every agent of Moscow in the United States. It will make every anti-Republican in Michigan laugh”.

The campaign was a negative one. Both sides engaged in heated accusations against the other including one against Judge Tuttle criticizing him for not resigning as judge while running for the Senate. Early returns favored Tuttle, but Couzens prevailed. Tuttle carried the out-state vote by a close margin, but lost big in Detroit where Couzens defeated him by better than 2-1. After the loss, in an honorable act, Tuttle pledged to support Couzens in the general election.

Back on the bench, Tuttle continued to work conscientiously. In his first twenty years of service, he was reversed only 35 times. Tuttle gained a reputation within the federal judiciary as an expert in patent and admiralty law. In 1927 he presided over hearings in the famous one-million-dollar libel suit brought against auto industrialist Henry Ford by Aaron Sapiro, a leader in the nation's farm cooperative movement. However, after a few months he recused himself upon being charged with bias by Ford's lawyers!

Hangin' Judge

The two biggest and most controversial cases in Tuttle's 32 years on the federal bench came late in his tenure. On November 30, 1937, following the directive of a jury, Tuttle sentenced 38-year-old Polish immigrant Anthony Chebatoris to hang. A career criminal, Chebatoris shot an innocent

bystander during a foiled bank robbery in Midland. His accomplice was killed by a local dentist while attempting to escape. In 1846, Michigan had been the first English-speaking government in the world to abolish capital punishment for murder. State law, however, did not apply because the defendant had violated the National Bank Robbery Act of 1934. It provided for the death penalty in cases where a murder occurred during the robbery of a bank with membership in the Federal Deposit Insurance Corporation or the Federal Reserve System. The bank involved belonged to both. The law mandated that the execution take place in the state where the infraction occurred, if it had a death penalty. Unknown to most, Michigan had a death provision for treason. Technically, therefore, Michigan was considered a death-penalty state.

The hanging of Chebatoris at the federal prison in Milan would be the only execution ever to take place within Michigan borders since statehood in 1837. This significance was appalling to governor Frank Murphy, a death-penalty foe. He appealed to President Roosevelt to transfer the execution to another state. U.S. Attorney General, Homer Cummings, left the decision to Judge Tuttle who said: “I have neither the power nor the inclination to change the sentence. If I did have the power to do so, I think it would be unfair to suggest that the people of a neighboring state are less humane than are the people of our own state of Michigan. This federal court is enforcing a federal law in Michigan for an offense against the United States, committed in Michigan.”

Chebatoris was hanged in Milan at dawn on July 8, 1938. A bitter governor Murphy called it “a blot on Michigan's civilized record.”



In 1942, during another high-profile case, Judge Tuttle sentenced German-born Max Stephan, a Detroit restaurant owner, to hang for assisting a Nazi pilot who had escaped a Canadian prisoner-of-war camp? Lieutenant Hans Peter Krug contacted Stephan after crossing the Detroit River in a rowboat. Stephan gave him drinks, food, lodging and the services of a

prostitute before paying his bus fare to Chicago. Krug, who was captured in San Antonio on his way to Mexico, testified against Stephan. Stephan was convicted by a jury on July 2, 1942. A defiant Stephan boasted, "Victory will be sure. Germany will not let me hang."

"Stephan never lost his love for Germany," said the judge during sentencing. "The life of this traitor, Max Stephan, is less valuable than the lives of our loyal sons which are being given to the cause of the United States. This court does not hesitate to take the life of one traitor, if it, in turn, will help the just cause of the United States. This court should, in no hesitating and certain way, say to the disloyal element that during this awful war penalty for treason is death."

Tuttle ordered Stephan housed in a cell at Milan until November 13th, "and on that day, within the walls of the federal correctional institution or within an enclosed yard thereof, the said defendant be by the United States Marshal hanged by the neck until he, the said Max Stephan, is dead." The sentence surprised the packed courtroom of several hundred people. Few had expected a penalty of death. Various prison terms were also an option under the federal treason statute. Stephan became the first person in the country convicted of treason since the Whiskey Rebellion of 1794. In that case two men were convicted and sentenced to death but were pardoned by President George Washington.

Appeals delayed the execution. A new date was set for July 2, 1943. The U.S. Supreme Court refused to intervene three separate times, with Chief Justice Harlan Fiske Stone denying a stay of execution less than a week before the scheduled event.³ United States Attorney General Francis Biddle decided against recommending presidential action in the case. However, Frank Murphy, now an Associate Justice, for the second time in five years, sought change of a Tuttle sentence of execution by requesting a reprieve from President Roosevelt. Roosevelt, a friend, had put him on the Supreme Court. On July 1st, less than twelve hours before the traitor's date with death, President Roosevelt commuted the death sentence to life imprisonment. The President stated that Stephan had been "properly

convicted of treason," but that death was too harsh a punishment. Roosevelt expressed a wish that no future president would further reduce Stephan's punishment. Upon hearing his life had been spared, Stephan wept uncontrollably and kissed the hands of his prison warden.

Federal Bench "Dean"

Arthur J. Tuttle, vilified in some quarters while revered in others, had become the dean of federal judges in the four states comprising the Sixth U.S. Circuit Court of Appeals – Michigan, Ohio, Kentucky and Tennessee. He had served the federal judiciary for 32 years when taking ill in late 1944. The elderly judge suffered from severe arthritis. Tuttle died at Henry Ford Hospital in Detroit in the early hours of Sunday, December 3rd. His two daughters were with him. He was 76. Funeral services were held at the North Woodward Congregational Church in Detroit with retired Reverend Joseph Q. Mayne presiding. Mayne had officiated over the joint wedding ceremony of the Tuttle daughters. Judge Tuttle was buried at Woodlawn Cemetery in his native Leslie, Michigan. Federal judges served as honorary pallbearers.

On December 20th, friends and colleagues gathered at a memorial service. Many local, state and federal judges were present. Hal H. Smith, who had been an early opponent in the 1924 Senatorial primary, described Judge Tuttle in an eloquent tribute on behalf of the Detroit Bar Association:

"He had what I call a mental integrity, a conscience of the mind. The rule that governed him was his respect for the law as supreme arbiter. He had intense political and social convictions, but when the law and the statute did not square with them, he sternly repressed those convictions. He never let his judgments be swayed by them or his prejudice. He seemed to fear that his judgments might be modified by his prejudices and his friendships. The laymen of this community will remember him as a just and forthright judge, one who was harsh sometimes with evasion or insincerity, because he could pardon ignorance, but not anything that had any element of

fraud in it whatsoever. But we of the bar will remember him as a just judge and as a friend to all of us, who, by his example of industry spurred us continually to new endeavor; who, by his probative ability raised the standards of all the bar; and who always held up before us the immaculate ideals of our mistress, the laws of this country.”

NOTES:

1. This case is the subject of an article that will be published later this year.
2. For a more in depth account of this case refer to “No Ordinary Crime” by James R. Wilson (Broadblade Press, 11314 Miller Road, Swartz Creek, MI), 1989.
3. For more information concerning the court proceedings refer to 133 F.2d 87 (6th Cir. 1943) (includes interesting and detailed discussion of the facts supporting the indictment and evidence introduced at trial); 49 F. Supp. 897 (ED Mich, 1943) (decision on petition for allowance of an appeal to the United States Supreme Court); 50 F. Supp. 445 (ED Mich, 1943) (decision on second motion for new trail); and 319 U.S. 423 (June 1, 1943) (decision on application for the allowance of a direct appeal which followed the denial of certiorari and motion for rehearing). ■

New Federal Court Affiliation for FBA and Historical Society

The Federal Bar Association’s Eastern District of Michigan Chapter and the Historical Society For The United States District Court For The Eastern District Of Michigan are now working together to advance common interests relating to the Eastern District, and federal district courts in general. Just before the last meeting of the FBA which was held jointly with the Historical Society, 100 members of the FBA paid their dues and added the Historical Society to their memberships.

The Historical Society, founded in 1992, preserves the history of the federal district court and personnel associated with it. Activities include: an oral history program that collects and preserves the reminiscences of retired or senior judges and court officials; its newsletter, published three times each year, with articles on interesting historical topics; and its annual meeting, which features distinguished speakers. ■



FBA Honors Retired State Justice Boyle

Late last fall, top executives of Michigan’s five law schools gathered at downtown Detroit’s Crowne Plaza Pontchartrain hotel for student awards, and to hear Justice Patricia Boyle recap 40 years of service to law and the people of Michigan.

The Edward Rakow law school scholarship awards went to two deserving students. Then Justice Boyle, honor student, legal leader, former Michigan Supreme Court Justice, former federal court judge, asst. prosecutor, asst. U.S. attorney, instructor, county judge and civic leader scanned highlights of her career, bestowing laurels to her top Wayne County judge-husband, Terrance Boyle, also retiring from the bench.

“The only woman in my WSU graduating class in 1963, I was the last to find a job,” she said. She became a fighter for women’s rights in the legal workplace. U.S. District Judge Ted Machrowicz and U.S. Attorney Larry Gubow (later a federal judge) helped her through early days by hiring her as a clerk and U.S. Attorney, respectfully. Judges such as Geraldine Bledsoe Ford and Anna Diggs Taylor shared an office with her in the collection division, as the bright career began. She left the federal bench as the choice of Gov. James Blanchard for the Michigan High Court.

In the above photo she is surrounded by old friends Michael Leibson, Chief Asst. U.S. Attorney and FBA president, Federal Court Historical Society aide Hugh Munce, U.S. District Court Judge Paul Gadola and program chair Daniel Clark. ■

MEMBERSHIP APPLICATION

Annual membership fees:

- | | |
|-------------------------------------|----------------------------|
| <input type="checkbox"/> FBA Member | \$ 10.00 |
| <input type="checkbox"/> Member | \$ 15.00 |
| <input type="checkbox"/> Patron | \$100.00
<i>or more</i> |

Please make checks payable to:

Historical Society – U.S. District Court – E.D. Michigan

Membership contributions to the Society are tax deductible within the limits of the law.

Name: _____

Address: _____

City: _____

State/Zip Code: _____

Phone: _____
DAY EVENING

This is a gift membership from:

QUESTIONNAIRE

We would like to know about your interests and skills. Please fill in this questionnaire and mail it with your membership fee.

Name: _____

Special interests in the field of legal history:

Suggestions for programs or projects:

Indicate interest in Society's activities:

- Writing articles for the Society newsletter
- Conference planning
- Oral history
- Research in special topics in legal history
- Fund development for the Society
- Membership recruitment
- Archival preservation
- Exhibit preparation
- Educational programs
- Other (*please describe*): _____

THIS FORM MAY BE DUPLICATED AND SUBMITTED WITH YOUR MEMBERSHIP FEE

*The Historical Society
U.S. District Court
Theodore Levin U.S. Courthouse
Detroit, Michigan 48226*